

APPEAL NO. 010037

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing (CCH) held on October 25, 2000, the hearing officer resolved the disputed issues by determining that the date of injury is _____; that the respondent (claimant) timely reported the injury to his employer pursuant to Section 409.001; that the appellant (carrier) is not relieved from liability under Section 409.002; and that the claimant had disability from January 20, 2000, through August 14, 2000. The carrier has filed an appeal challenging these determinations on evidentiary grounds. The file does not contain a response from the claimant.

DECISION

Reversed and remanded for reconstruction of the record.

At approximately meter mark 327 on side B of the single audiotape cassette forwarded with the record of the hearing, the carrier's attorney announced that she was calling Mr. O, the claimant's supervisor, for testimony and the hearing officer then stated that he would "pause for the record as you do that." The audiotape next picks up at meter mark 328 at some point in the claimant's closing statement, records the carrier's closing statement, and records the claimant's rebuttal statement. The hearing officer then closes the hearing and goes off the record at meter mark 529. Because, at the least, the testimony of Mr. O is not recorded, the record is incomplete and must be remanded for reconstruction of the missing portions of the hearing. Section 410.203(a)(1) requires the Appeals Panel to consider "the record developed at the [CCH]." *And see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.2(a). *See also* Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992, and cases cited therein.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is

received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge